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The Domestic Politics of International Children's Rights: A Dutch Perspective

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Introduction

This chapter addresses the question of whether the UN human rights treaty bodies – and especially the UN Committee on the Rights of the Child (CRC Committee) – act as engines for incorporating universal norms at the domestic level. Elements of such incorporation manifest, among other ways, in the extent to which a state changes its policy and/or legislation (partly) on the basis of the recommendations of these human rights treaty bodies. This chapter will also explore the factors which determine whether treaty body recommendations are implemented, or not.

Koskenniemi has argued that politics is about different conceptions of justice, and justice is inherently political.¹ In other words, he treats politics and justice as closely interrelated. In various ways, this observation also underlies this chapter on the domestic impact of the work of UN human rights treaty bodies on state reporting procedures. First, the work of the treaty bodies is aimed at the realisation of justice by monitoring the implementation of international human rights treaties. This was noted by former Secretary-General Ban Ki-moon when he argued that: 'the treaty bodies stand at the heart of the international human rights protection system as engines translating universal norms into social justice'.²

* This chapter is based on Krommendijk's PhD research conducted from November 2009 until March 2014, which focused on state reporting under the six main UN human rights treaties in the Netherlands, New Zealand, and Finland. See Jasper Krommendijk, *The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in the Netherlands, New Zealand and Finland: Paper-Pushing or Policy Prompting?* (Antwerp: Intersentia, 2014).

¹ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006).

² Ban Ki-moon, 'Foreword by the Secretary-General', in Navi Pillay, *Strengthening the United Nations Human Rights Treaty Body System* (2012), 7. www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf

Second, as will be illustrated in this chapter, treaty bodies are very much engaged with politics as well. For example, they interpret open-ended treaty provisions, they formulate recommendations, and they decide how to handle information submitted by NGOs. Such acts are inherently political and imply dealing with, in the view of Koskenniemi in Chapter 2 of this book, the ‘two completely different conceptual worlds’ of the legal and the political.³ Third, the process of implementation of non-binding recommendations from international legal institutions is essentially political. As will be shown in this chapter, non-legal aspects frequently determine whether the recommendations are acted upon at the domestic level. (Non-)compliance is primarily affected by political interests and preferences of the government. (Non-)compliance with recommendations is thus the result or byproduct of domestic politics.⁴ The argument that there is a political dimension to the implementation of international norms also coincides with Koskenniemi’s claim that international law should not ‘escape politics’ or treat politics as opposed to international law.⁵ Similarly, the fight for an international rule of law should not be seen as a fight against politics, but a fight which takes place within politics.⁶ This also implies that international norms and recommendations only have effect through the filter of domestic politics.⁷ Hence, this chapter concurs with Koskenniemi’s argument that ‘social conflict must still be solved by political means’.⁸ Fourth, the examination of this domestic political implementation process requires venturing into other disciplines than law, including political science, international relations, and sociology, as Koskenniemi noted in the early 1990s.⁹

The UN human rights state reporting procedures are based on the obligations of states which have ratified, or acceded to, these treaties (the states parties) to submit periodically, usually every four or five years, a report on the implementation of this treaty.¹⁰ These state reports are

³ See Chapter 2, 25.

⁴ Oona Hathaway, ‘Do Human Rights Treaties Make a Difference?’, *Yale Law Journal*, 111 (2002), 1935–2042.

⁵ Martti Koskenniemi, ‘The Politics of International Law’ *European Journal of International Law*, 1 (1990), 4–32 at 6.

⁶ *Ibid.* 5.

⁷ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization*, 52 (1998), 887–917, 893.

⁸ Koskenniemi, ‘Politics of International Law’ (1990), 7.

⁹ *Ibid.* 32.

¹⁰ The six main UN human rights treaties that were included in this research and chapter are the Convention on the Elimination of All Forms of Racial Discrimination 660 UNTS 195

examined by an independent committee of experts (a ‘treaty body’), through a so-called constructive dialogue with representatives of the state party. Civil society and non-governmental organisations (NGOs) are allowed to submit alternative and/or additional information to the treaty body. The assessment of a state report ends with the adoption of Concluding Observations (COs) by the treaty body, which contain suggestions and recommendations for improving implementation of the treaty standards. As stated earlier, these COs are non-binding in technical legal terms. This chapter will particularly focus on the reporting process of the UN Convention on the Rights of the Child (CRC) as regards the Netherlands, in order to explain the fact that the Dutch government has introduced laws and policies to give effect to some of the COs.¹¹

The structure of this chapter is as follows. The next section will examine two theoretical explanations for the impact of COs that have inspired the empirical analysis for this chapter. The third section will examine the state reporting process conducted by the six treaty bodies and will provide four examples of COs of the CRC Committee that have been acted upon. The fourth section will explain the role of the CRC Committees’ COs in the Netherlands on the basis of the two theoretical hypotheses and other factors.

Theorising the Homecoming of International Recommendations

As explained above, this chapter analyses the extent to which the Dutch government has taken any policy or legislative measures on the basis of the COs. The methodology used to conduct this analysis primarily consists of

(opened for signature 21 December 1965, entered into force 4 January 1969) (ICERD); the International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976) (ICCPR); the International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (opened for signature 16 December 1966, entered into force 3 January 1976) (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women 1249 UNTS 13 (opened for signature 18 December 1979, entered into force 3 September 1981) (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1465 UNTS 85 (opened for signature 10 December 1984, entered into force 26 June 1987) (CAT); and the United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) (CRC).

¹¹ To date, the CRC Committee has examined the Dutch situation four times, in 1999, 2004, 2009, and 2015. As the research project that was the basis for this chapter ended in 2014, and at the moment of writing it was rather early to assess the follow-up to the June 2015 COs, the latest set of COs has not been analysed here.

an examination of documents in which show that the government provided a reaction to the COs. These documents include in particular the periodic state reports and letters to Parliament. This analysis was complemented by sixty-three interviews with Dutch government officials and NGO and UNICEF representatives.¹² These interviews included twelve (former) Dutch government officials from five different ministries who had been involved in the process of CRC state reporting by way of drafting the state report and attending the dialogue with the CRC Committee in Geneva in 1999, 2004, and/or 2009.¹³ In total, eight representatives from four different NGOs¹⁴ involved in the CRC reporting process and from the Dutch National UNICEF Committee were interviewed as well. First of all, the interviewees were asked to give examples of implemented COs themselves (see the two columns on the right of Table 1). Second, the interviewees were asked whether particular COs have played a role in policy and legislative measures and in what way(s).

In addition to an analysis of the level of implementation of COs, this chapter explores why policy or legislative measures have (or have not) been taken on the basis of COs. The latter question has also been addressed in international relations literature on international norm compliance and implementation. In this chapter, two theoretical explanations will be provided: the compliance pull, and domestic and transnational mobilisation.¹⁵

Legitimacy and Compliance Pull

Legally speaking, COs are non-binding, and the treaty bodies lack instruments to enforce and coerce compliance with their recommendations.

¹² In order to protect the anonymity of the interviewees, their names and identities are not disclosed. Instead, a randomly generated series of numbers (government officials) and letters (NGO representatives) will be used for reference. The summary reports of the interviews are on file with the author and can be accessed upon request.

¹³ Officials of the following ministries were interviewed: the Ministry of Health, Welfare and Sport; the Ministry of Foreign Affairs; the Ministry of Justice; the Ministry of Social Affairs and Employment; the Ministry of Youth and Families (in existence during the period 2007–2010).

¹⁴ Representatives of the following NGOs were interviewed: the Dutch section of Defence for Children International; Justitia et Pax; the Dutch section of the International Commission of Jurists (NJCM); and the Johannes Wier Foundation.

¹⁵ For a more elaborate account, see also Jasper Krommendijk, 'The Domestic Effectiveness of International Human Rights Monitoring in Established Democracies: The Case of the UN Human Rights Treaty Bodies', *Review of International Organizations*, 10 (2015), 489–512.

A first theoretical implication of this feature of COs is that their implementation is contingent upon the extent to which the treaty bodies and their output exert a normative compliance pull. It has been pointed out that legitimacy is especially crucial when courts or other institutions lack coercive means.¹⁶ Alvarez, for example, has argued that 'legitimacy is the missing link in solving the mystery of how the international system obliges without a coercive force'.¹⁷ Similarly, Franck has observed that 'legitimacy has the power to pull toward compliance those who cannot be compelled'.¹⁸ Legitimacy strongly relates to subjective perception and belief systems of actors.¹⁹ For the implementation of COs it is therefore crucial that governments feel bound to comply with the COs, even though formally they are non-binding. This compliance pull depends among other things on government officials' perceptions as to the legitimacy, usefulness, persuasiveness, and legal quality of the COs, as well as the authority of the relevant treaty body. Based on this theoretical insight, this chapter will further rely on the attitudes and perceptions of Dutch government officials concerning the process of state reporting, the CRC Committee, and the COs. Information was gathered on these perceptions through semi-structured interviews with government officials. In order to determine whether a compliance pull existed, questions were raised about the views of officials concerning the quality of the constructive dialogue with the CRC Committee, the COs, and the treaty bodies.

Domestic and Transnational Human Rights Mobilisation and Advocacy

The second compliance mechanism that features in this chapter deals with domestic and transnational human rights mobilisation and advocacy. Liberal international relations scholars have argued that international institutions are able to change the behaviour of a state through domestic institutions, such as domestic courts, and by mobilising domestic advocacy

¹⁶ James Gibson and Gregory Caldeira, 'The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice', *American Journal of Political Science*, 39/2 (1995), 459–489 at 460, 470.

¹⁷ Jose Alvarez, 'Book Review Essay: The Quest for Legitimacy: An Examination of the Power of Legitimacy among Nations by Thomas M. Franck', *International Law and Politics*, 24 (1991), 199–267 at 206.

¹⁸ Thomas Franck, *The Power of Legitimacy and Institutions* (New York: Oxford University Press, 1990), at 24, 26.

¹⁹ Ian Hurd, 'Legitimacy and Authority in International Politics', *International Organization*, 53/2 (1999), 379–408 at 381; Alvarez, 'Book Review', 206.

groups, NGOs, or political parties that pressure governments to change behaviour.²⁰ Several studies have even concluded that domestic change on the basis of international norms is unlikely to happen unless domestic actors take them up and demand change.²¹ Moravcsik has maintained that international human rights institutions ‘coopt’ domestic actors who consequently pressure their governments for compliance ‘from within’. He has concluded that international norms and institutions can shift the balance of power within and between domestic actors and prompt a change in coalitions and calculations underlying governmental policies, which might eventually lead to a policy change.²² Likewise, Alter has held that international courts can act as ‘tipping point actors’ who support domestic compliance constituencies and provide them with ‘resources’. In this way, they can tip the political balance in favour of policies in line with international norms.²³ Dai’s theory on domestic compliance constituencies as ‘decentralised enforcers’ has noted how international norms and institutions can create a focal point for domestic actors and strengthen their leverage and legitimise their demands.²⁴ This also reflects Simmons’ domestic politics theory on compliance with human rights treaties as ‘a tool to support political mobilisation’.²⁵ This domestic mobilisation mechanism mirrors Keck and Sikkink’s ‘boomerang effect’, which describes how coalitions of domestic compliance constituencies and NGOs seek international support and link up with transnational networks to bring pressure on their states from the outside. These international linkages allow such coalitions to gain leverage by introducing new issues, norms, and discourses into the debate and strengthening and amplifying their demands so that the terms of the debate

²⁰ Hathaway, ‘Human Rights Treaties’, 1954. Likewise, constructivist international relations theorists have pointed to the important role of domestic ‘norm entrepreneurs’ who use international norms to reinforce their (minority) position in domestic discussions and act as ‘agents of socialisation’ by demanding a policy or legislative change. Finnemore and Sikkink, ‘International Norm Dynamics’, 893, 902.

²¹ See e.g. Tanja Börzel and Thomas Risse, ‘From Europeanisation to Diffusion: Introduction’, *West European Politics*, 35/1 (2012), 1–19 at 11.

²² Andrew Moravcsik, ‘Explaining International Human Rights Regimes: Liberal Theory and Western Europe’, *European Journal of International Relations*, 1/2 (1995), 157–89.

²³ Karen Alter, ‘Tipping the Balance: International Courts and the Construction of International and Domestic Politics’, *Cambridge Yearbook of European Legal Studies*, 13 (2012), 1–21, at 1, 5.

²⁴ Xinyuan Dai, ‘Why Comply? The Domestic Constituency Mechanism’, *International Organization*, 59 (2005), 363–98.

²⁵ Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), 135.

can shift.²⁶ In that way, they pressure states simultaneously from above and from below.²⁷

In light of this theoretical premise, the extent to which domestic actors in the Netherlands have picked up, discussed, and utilised COs to lobby and pressure the Dutch government will be examined in the next section. This is supported by an analysis of parliamentary papers, court judgments, newspaper articles, and NGO websites for the period from 1 September 1995 until 31 August 2011.²⁸ In addition, government officials and NGO representatives were asked about their ideas concerning the impact of COs during the interviews.

The Implementation of the COs of the CRC Committee: A Positive Exception in the Netherlands

Generally speaking, the Dutch government has hardly taken measures as a direct result of COs from the six UN human rights treaty bodies.²⁹ To the contrary, the government has rejected some of the concerns and recommendations of the treaty bodies.³⁰ In this context, it has produced

²⁶ Margaret Keck and Kathryn Sikkink, 'Transnational Advocacy Networks in International and Regional Politics', *International Social Science Journal*, 51/1 (1999), 89–101 at 90, 93; Thomas Risse and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction', in Thomas Risse, Stephen Ropp, and Kathryn Sikkink, eds, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), 1–38 at 18.

²⁷ Risse and Sikkink, 'Socialization', 5.

²⁸ These documents were traced by using, respectively, Parlando, zoek.officiëlebeleidmaken.nl, rechtspraak.nl, Lexis Nexis, and Google Search. The search terms and results are on file with the author and are available upon request.

²⁹ See also the introduction to this book (Chapter 1), which refers to Koskeniemi's observation that 'the rhetoric of law' has lost its 'transformative effect' because of 'over-legalistic explanations' as a result of which it is 'not as powerful as it claims to be' (Chapter 1, 13); Martti Koskeniemi, *The Politics of International Law* (Oxford: Hart, 2011), 133. It likewise coincided with Oomen's studies of the disconnect between national and global justice. Barbara Oomen, *Rights for Others: The Slow Home-Come of Human Rights in the Netherlands* (Cambridge: Cambridge University Press, 2013).

³⁰ For further elaboration on this and other points, for CEDAW, ICERD, and ICCPR in specific, see Jasper Krommendijk, 'The Impact and Effectiveness of State Reporting under the Women's Convention: The Case of the Netherlands', in Ingrid Westendorp, ed., *The Women's Convention Turned 30: Achievements, Setbacks, and Prospects* (Antwerpen: Intersentia, 2012), 487–512; Jasper Krommendijk, 'The (Non-) Implementation of Recommendations of the Committee on the Elimination of Racial Discrimination in the Netherlands Explained', *Perspectives on European Politics and Society*, 13 (2012), 462–79; Jasper Krommendijk, 'De Beperkte Effectiviteit van de Aanbevelingen van het VN-Mensenrechtencomité in Nederland nader bekeken en verklaard' [The Limited Effectiveness of the Recommendations of the UN Human Rights Committee in the

various potential justifications for its positions, including budgetary constraints, a deliberate policy decision of a democratically elected legislature, or a conflict with other international obligations. In other instances, the government has simply argued that it did not agree with the assessment of the treaty body and that, for example, sufficient safeguards were already in place.

A further, plausible reason for the absence of any follow-up measures on the part of the Dutch government is that many of the rather broad and unspecific COs did not outline a specific course of action. Several COs have merely recommended the government to ‘continue its efforts’³¹ ‘strengthen measures’,³² ‘continue and further strengthen its efforts’,³³ and even ‘further strengthen the measures already taken’.³⁴ Other COs have recommended the Dutch government to ‘take all necessary measures’³⁵ or ‘take all appropriate measures’³⁶ without including concrete suggestions. Hence, the government has usually made clear that measures have (already) been taken that are in line with or address the COs sufficiently. COs have, thus, frequently coincided with measures already in place and what the government was already doing. The absence of such follow-up measures on the part of the government corresponds to the scepticism of Koskeniemi about signing a domestic bill of rights or any of the international human rights treaties. He regards the signing of such documents as a mere re-description of the existing reality, without any tangible effects.³⁷

There are, however, also a couple of COs that have led to policy or legislative changes or additional measures.³⁸ Eleven of the twenty-four measures that were taken on this basis in the Netherlands related to COs of the CRC Committee, while the other thirteen measures were related to

Netherlands: A Closer Examination and Explanation], *Nederlands Tijdschrift voor de Mensenrechten-NJCM/Bulletin*, 38/2 (2013), 212–28.

³¹ See e.g. UN Doc. CRC/C/15/Add.227 (2004), para. 22.

³² *Ibid.* para. 23.

³³ See e.g. UN Doc. CRC/C/NLD/CO/3 (2009), para. 23.

³⁴ *Ibid.* para. 68.

³⁵ See e.g. UN Doc. CRC/C/15/Add.227 (2004), paras. 34 (b), 46, 48, 50.

³⁶ See e.g. UN Doc. CRC/C/NLD/CO/3 (2009), paras. 29, 52, 74 (e), 81, 83.

³⁷ See Chapter 2 of this book.

³⁸ Examples of implemented COs of other treaty bodies include the SGP court case (involving gender discrimination by a government-funded political party) and the evaluation of the gender dimension of the asylum policy (both relating to CEDAW); the increased domestic attention and debate about central storage of fingerprints (ICCPR); the integration of medical reports in the asylum procedure (CAT); and the increased domestic attention to school segregation (ICERD).

Table 1. Overview of Implemented COs of the CRC Committee, referring to the Netherlands

Policy or legislative measure	COs (referred to by year of adoption)	Nr. of references in parliamentary papers by government	Nr. of references in parliamentary papers by Parliament	Nr. of gov. officials who mentioned the CO as realised	Nr. of NGO and UNICEF reps. who mentioned the CO as realised
Establishment of a Children's Ombudsman	'99, '04, and '09	4	19	4	5
Abolishment of life imprisonment for minors	'99 and '04	3	2	1	-
Separate housing of juvenile offenders	'04	2	3	2	5
Prohibition of corporal punishment	'99 and '04	4	4	2	1
Improvements in asylum procedure/detention minors	'99, '04, and '09	3	12	1	3
Some initiatives in the context of human rights education	'99, '04, and '09	-	2	2	1
Increased dissemination of information on the CRC	'99, '04, and '09	1	-	1	3
Improved interaction with NGOs	'99, '04, and '09	-	-	-	2
Renewed consultations about foster care	'09	-	1	1	-
Promotion of breastfeeding	'99	-	1	-	-
Campaign against child abuse in 2009	'99	-	-	-	1

Source: J. Krommendijk, The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in the Netherlands, New Zealand and Finland (Antwerp: Intersentia, 2014), 233–4.

COs of the other five treaty bodies (Table 1).³⁹ The rest of this section will discuss the four implemented COs listed first in the table below as illustrations of this ‘CRC exception’.

Example 1: The Establishment of a Children’s Ombudsman

On three occasions, the CRC Committee has recommended the establishment of a Children’s Ombudsman to monitor the implementation of the CRC at the national level in the Netherlands.⁴⁰ The government was rather dismissive of the committee’s recommendation on the first occasion in 1999.⁴¹ These reservations notwithstanding, the first Children’s Ombudsman eventually took office on 1 April 2011. The establishment of this office was the direct result of a legislative proposal by Member of Parliament (MP) Arib of the Dutch labour party (PvdA). Arib explicitly stated that her legislative proposal stemmed from the recommendations of the CRC Committee.⁴² It is noteworthy that on nineteen occasions several other MPs also mentioned the COs as a reason for the establishment of the Children’s Ombudsman (see Table 1).⁴³ This illustrates that the COs gave a necessary push and offered additional support for Arib’s proposal and also reinforced the arguments of other proponents. One interviewee even argued that the

³⁹ The findings for the Netherlands do not stand alone. The implementation of the COs of the CRC Committee was also better than that of the COs of the other treaty bodies in New Zealand. Eleven out of the twenty implemented COs in the New Zealand were from the CRC Committee. This outcome was attributed to the strategic use of the reporting process and the COs by the Ministry of Youth Affairs, the advocacy by NGOs, and the Children’s Commissioner. Jasper Krommendijk, ‘Can Mr. Zaoui Freely Cross the Foreshore and Seabed? The Effectiveness of UN Human Rights Monitoring Mechanisms in New Zealand’, *Victoria University of Wellington Law Review*, 43/4 (2012), 579–615.

⁴⁰ UN Doc. CRC/C/90 (1999), para. 12; UN Doc. CRC/C/15/Add.227 (2004), paras. 8, 20, 21; UN Doc. CRC/C/NLD/CO/3, paras. 8, 16, 17.

⁴¹ The government did not see a need for the establishment of an ombudsman, because several of the ombudsman’s potential activities were already being undertaken by other institutions. In addition, the government pointed to budgetary constraints. The government also held that the CRC does not require this either. See UN Doc. CRC/C/117/Add.1 (2002), para. 31; TK 2003/04, 29200 VI, nr. 21, 85; TK 2003/04, 29200 VI, nr. 96, 5.

⁴² The initial proposal was already submitted by Arib and Van Vliet (D66) in 2001. The proposal was, however, not considered until Arib took up the issue again in 2009. See TK 2001/02, 28102, nr. 3; TK 2009/10, 31831, nr. 1–3 and 9, 20.

⁴³ See e.g. the statements made by Slagter-Roukema (SP), De Vries-Leggedoor (CDA) and Hamer (PvdA). EK 2009/10, nr. 32, 1373–6 at 1373–5. See also the references made by Langkamp (SP) TK 2009/10, nr. 79, 6765–77 at 6765.

Children's Ombudsman would not have been established had the committee not recommended it in its COs of 1999.⁴⁴ One representative of the Dutch section of the NGO Defence for Children International mentioned that NGOs would not have been so wound up about establishing a Children's Ombudsman had the committee not emphasised this issue so much.⁴⁵ Both government officials and NGO representatives stressed the crucial role of the pressure and political interest of Parliament in the implementation of the COs.⁴⁶

The role of the NGOs and UNICEF was also identified as an important factor. Arib wrote her proposal together with representatives from the Dutch National UNICEF Committee and the Dutch section of Defence for Children.⁴⁷ In addition, the specificity of the COs was highlighted as a factor contributing to their implementation.⁴⁸ It was also considered important that the then Minister for Youth and Families, Rouvoet of the Christian Union (Christen Unie or CU) party (2007–2010), eventually supported the establishment of the Children's Ombudsman and even considered it a spearhead of his youth policy.⁴⁹ The latter also reflects the positive view of Rouvoet towards (reporting under) the CRC. He recognised the CRC as the starting point for his youth policy immediately after he had taken office.⁵⁰ The CRC was explicitly regarded as the foundation for the Policy Programme of Youth and Families, All Chances for All Children.⁵¹ He even spoke about 'his' Convention and called himself the 'joint-owner' of the CRC.⁵² Rouvoet was also personally involved in the process of state reporting and approached reporting as an inspiration and a boost rather than a burden. Reporting was also used in this period to create

⁴⁴ Interview K.

⁴⁵ Interview C.

⁴⁶ Interviews 5, 8, 11, 54, 98, C, D, J, M, W. Note that several political parties already propagated the establishment of a Children's Ombudsman before the 1999 COs. 'Pleidooi Raadgever Kinderen' [Plea for Children's Counselor], *NRC Handelsblad*, 15 September 1999, 5.

⁴⁷ Respectively Carla van Os and Majorie Kaandorp. Interview M.

⁴⁸ Interview 54.

⁴⁹ Interview 8. *TK* 2009/10, nr. 32, 1385–92 at 1387–88.

⁵⁰ *TK* 2006/07, 31001, nr. 1, 1.

⁵¹ 'Alle Kansen Voor Alle Kinderen: Programma Jeugd en Gezin 2007–2011' [All Chances for All Children Programme Youth and Families 2007–2011], attached to *TK* 2006/07, 31001, nr. 5, 9, 38, 47.

⁵² See the speech during the children's rights summit on 20 November 2009 in The Hague. www.rijksoverheid.nl/documenten-en-publicaties/toespraken/2009/11/20/kinderrechtentop-in-leiden.html

a moment of (media) attention for children's rights and to raise awareness of the issues involved.⁵³

Example 2: The Abolishment of Life Imprisonment for Minors

The COs of both 1999 and 2004 recommended that the government of the Netherlands outlaw the possibility of imposing life imprisonment on minors.⁵⁴ Following this recommendation, a bill was proposed by the Dutch government to amend the Criminal Code, the Code of Criminal Procedure, and the Youth Care Act to exclude the possibility of imposing life imprisonment.⁵⁵ The Explanatory Memorandum to the legislative proposal referred to the COs and mentioned that the bill was proposed in order to make Dutch legislation conform to the CRC.⁵⁶ The government referred to the COs on other occasions as well (see Table 1).⁵⁷ One government official interviewed, who was closely involved in the drafting of the bill, stated that the legislative amendment was a clear result of the COs. This official argued that taking up this issue was a personal initiative.⁵⁸ The official perceived political space for this proposal and anticipated that both the responsible minister and Parliament would agree with it.⁵⁹ The interviewed official argued that agreement was relatively easy to secure because life imprisonment of minors was a relative non-issue in the Netherlands and had never been applied in practice.⁶⁰ The interviewed official saw implementation of these COs primarily as a symbolic act without actual (political) costs and consequences. Be that as it may, it seems clear that the bill would not have been adopted had the CRC Committee not recommended this, because it was not considered an issue in the Netherlands.

⁵³ Interviews 49, 54.

⁵⁴ UN Doc. CRC/C/90 (1999), para. 30; UN Doc. CRC/C/15/Add.227 (2004), para. 59.

⁵⁵ TK 2005/06, 30332.

⁵⁶ TK 2005/06, 30332, nr. 3, 19.

⁵⁷ Minister for Youth and Families, Rouvoet, stated during the dialogue with the CRC Committee in 2009 that the government had amended its legislation in accordance with the COs. UN doc. CRC/C/SR.1376 (2010), para. 42. The Minister of Justice, Hirsch Ballin of the Christian Democratic party (CDA), mentioned the CO during the discussion of the bill in the Senate. EK 2007/08, nr. 15, 637–51 at 638.

⁵⁸ Interview 81.

⁵⁹ Bouchibti (of the Labour party or PvdA) noted that this legislative change did justice to the rights of child in the CRC, while de Wit (SP) even stated that the CO had been followed. TK 2006/07, nr. 56, 3197–205 at 3198, 3199, 3203.

⁶⁰ TK 2005/06, 30332, nr. 3, 19.

*Example 3: Housing Juvenile Offenders Separately from Children
Who Are Institutionalised for Behavioural Problems*

The CRC Committee also recommended, in its 2004 COs, that the joint detention or housing of juvenile offenders with children who are institutionalised for behavioural problems should be avoided.⁶¹ Shortly after a dialogue between the government delegation and the CRC Committee in 2004, it was decided to house these two categories of minors separately.⁶² The government argued in its CRC report that this decision was made 'partly in response' to the CO.⁶³ The then Minister of Justice, Donner, (of the Christian Democratic party, CDA) mentioned that this change would 'at the same time' implement the recommendation of the CRC Committee.⁶⁴ However, it would take until 1 January 2010 for the process of separate housing to be completed. During this period, various domestic actors kept pressure on the government to expedite this process. Government officials and NGO representatives that were interviewed confirmed that the CRC in general and the CO in particular were two of the many factors that played a role in accelerating the separate housing of these two categories of minors.⁶⁵

This example illustrates how international criticism clearly coincided with national politics and the broad wish of the government, Parliament, and societal actors to halt the practice. Joint detention had already been an issue in the Netherlands, widely discussed since the end of the 1990s.⁶⁶ There was political resistance in Parliament concerning the issue.⁶⁷ In addition, the media paid considerable attention to the matter and especially to the situation of children with behavioural problems who,

⁶¹ UN doc. CRC/C/15/Add.227 (2004), para. 59(d).

⁶² The announcement of the decision was made only two weeks after the dialogue and only four days after the adoption of the 2004 COs by the then Minister of Justice Donner. *TK* 2003/04, 28741, nr. 6, 4–5, 7. The minister himself did not refer to the COs in this context, nor did the Explanatory Memorandum to the bill refer to the 2004 COs or to the CRC. The memorandum emphasised the changed societal views and a study of the Verwey Jonker Institute as a starting point for the bill. *TK* 2005/06, 30644, nr. 3.

⁶³ UN doc. CRC/C/NLD/3 (2008), paras. 271–5.

⁶⁴ *TK* 2004/05, 28741, nr. 12, 2.

⁶⁵ Interviews 8, 54, C, D, J, W.

⁶⁶ The issue of joint detention had been talked about since the end of the nineties when the Youth Custodial Institutions Act was passed. *TK* 1997/98, 26 016 B, 1, 2.

⁶⁷ Already in March 2000, a motion proposed by Duijkers (of the Dutch labour party, PvdA) was adopted by Parliament stating that it was undesirable that these two groups of children were housed together. The government was requested to set up an investigation as to the possibilities to address this situation. *TK* 1999/00, 26016, nr. 13. After this motion, the issue was discussed several times in Parliament. *TK* 2003/04, 28741, nr. 8.

according to journalists, had been unlawfully detained.⁶⁸ More and more criticism was expressed by various domestic actors, including organisations of parents and magistrates in juvenile courts. The latter, for example, presented a manifesto concerning the issue.⁶⁹ Human rights and children's rights NGOs in the Netherlands, including the Dutch Lawyers Committee for Human Rights (NJCM) and the Dutch section of Defence for Children International, also lobbied on the issue. Many of these domestic actors used the CRC and the COs as a supporting argument (see also Table 1).⁷⁰ The implementation of this CO was also facilitated by the separate Minister for Youth and Families (2007–2010), who regarded the issue as important, and the related ministry.⁷¹

Example 4: The Prohibition of Corporal Punishment

In the 1999 and 2004 COs the CRC Committee recommended that the Dutch Government take legislative measures to explicitly prohibit corporal punishment.⁷² On 28 September 2005, Parliament adopted a bill banning parental violence, including corporal punishment, psychological abuse, and degrading treatment.⁷³ The full 2004 COs were reproduced in the Explanatory Memorandum to the legislative proposal.⁷⁴ The then Dutch Minister of Justice, Donner, made clear that the bill would implement the 2004 COs as well as similar recommendations of the European Committee of Social Rights (ECSR) and the Parliamentary Assembly of the Council of Europe.⁷⁵ In a letter of 25 June 2003, Donner had already noted that he was (still) not in favour of a legal prohibition.⁷⁶ During the dialogue with the CRC Committee on 15 January 2004, the Dutch delegation pronounced that the government

⁶⁸ See e.g. the front page article by Frederiek Weeda, 'Anouk Zit Onterecht in de Cel' [Anouk Is Wrongfully Locked Up], *NRC Next* (2 September 2009), 1, 4–5.

⁶⁹ Raad voor de Rechtspraak, 'Kinderrechters in Nederland Luiden de Noodklok' [Magistrates in Juvenile Courts in the Netherlands Sound the Alarm], 10 February 2004. www.nieuwsbank.nl/inp/2004/02/10/R243.htm

⁷⁰ See e.g. the National Audit Office that referred to the 2004 COs in a letter about youth custodial institutions. *TK* 2009/10, 31839, nr. 48, 2. The MP Voordewind (of the Christian Union party, or CU) referred to the 'request' of the CRC Committee as well. See *TK* 2009/10, 31839, nr. 54, 12.

⁷¹ Interviews 8, J.

⁷² UN Doc. CRC/C/90 (1999), para. 17. UN doc. CRC/C/15/Add.227 (2004), para. 44(d).

⁷³ UN doc. CRC/C/NLD/3 (2008), para. 144.

⁷⁴ *TK* 2005/06, 30316, nr. 3, 1–2.

⁷⁵ *TK* 2005/06, 30316, nr. 4, 3.

⁷⁶ *TK* 2002/03, just 030599.

was of the opinion that the existing provisions in the Dutch Civil Code were sufficient. The delegation, however, did mention that the issue was heavily debated at the domestic level, and that the position was not definitive and could change.⁷⁷ On 13 February 2004, less than a month after the dialogue, the Minister of Justice made clear that he had changed his opinion.⁷⁸

What is then the actual role of the COs in the legislative change? On the one hand, ministers mentioned several times that the proposed legislative change would implement the COs.⁷⁹ MPs extensively referred to the 2004 COs during the discussion of the bill prohibiting corporal punishment.⁸⁰ On the other hand, Minister of Justice Donner stated that the recommendations of the CRC Committee and other actors, such as the ECSR and the Parliamentary Assembly of the Council of Europe, were not the most important reason for the bill. Rather, Minister Donner pointed to the prevention of child abuse as the primary driver for the legislative change.⁸¹ On a later occasion, the minister noted that the legislative change was ‘partly’ the result of the recommendations of ‘several’ international organisations.⁸² Whereas one interviewee held that the ban would not have been established had the committee not recommended it, government officials argued that the legislative proposal was not directly the result of the CO.⁸³ They pointed to the parliamentary debate since the end of the 1990s. In the view of these interviewed government officials, the COs primarily supported the introduction and eventual adoption of the bill. One government official also pointed to the important role of an official of the Ministry of Justice who was personally dedicated to the issue and had tried to convince the

⁷⁷ UN doc. CRC/C/SR.929 (2004), para. 72.

⁷⁸ No reference was made to the COs in relation to this announcement. *TK* 2003/04, 28345, nr. 8, 2.

⁷⁹ The then Minister of Youth and Families, Rouvoet, made clear that the proposed legislative change implemented the COs. *TK* 2006/07, 31015, nr. 1, 2, and *TK* 2003/04, 29284, nr. 3, 1.

⁸⁰ For references by the political parties PvdA, VVD, and CDA to the COs in their written questions about the bill, see *TK* 2005/06, 30316, nr. 5, 2–3, 10. Several MPs made clear that, with the act, the Netherlands would finally comply with the CRC. See *TK* 2005/06, nr. 106, 6487–500 at 6489.

⁸¹ *TK* 2005/06, 30316, nr. 6, 2. Likewise, the minister did not point to the COs during the discussion of the bill in Parliament. He only mentioned the 2006 General Comment of the CRC Committee as well as the recommendation of the Parliamentary Assembly of the Council of Europe. See *TK* 2005/06, nr. 106, 6487–500 at 6495–7.

⁸² *EK* 2006/07, 30316, nr. B, 2.

⁸³ Interviews K, 47, 67, 98.

Minister of Justice to introduce a legal prohibition.⁸⁴ The fact that extensive attention had been paid to the issue of corporal punishment, both at the regional and international level, at the time the matter was being debated in the Dutch Parliament, was also considered important. The CO and other recommendations thus bolstered the arguments for the opponents of corporal punishment, thereby creating a window of opportunity for and accelerating the introduction of the bill.

The 'CRC Exception' Explained

The CRC COs show a better record of implementation in the Netherlands than the COs of other UN human rights treaty bodies. This begs an explanation. The earlier theoretical overview presented two explanations for the domestication of COs. On the basis of these two premises, the following hypotheses can be formulated to account for the 'CRC exception'. First, government officials might see the CRC Committee as more authoritative and legitimate than the other human rights treaty bodies. Officials are consequently persuaded or pulled towards compliance by the COs of the CRC Committee to a greater extent than is the case for the other treaty bodies. Second, the level of domestic and transnational mobilisation and advocacy might be higher in relation to the COs of the CRC Committee. As a result of this the government is under more pressure to implement the CRC COs than those of other treaty bodies. This section examines whether these two hypotheses are confirmed by the views of Dutch government officials, and may indeed explain the different position of the CRC.

Hypothesis 1: The CRC Committee Is More Authoritative

Government officials that were interviewed were almost equally critical about the functioning of the six different treaty bodies. They were rather negative about the usefulness, legitimacy, and persuasiveness of the treaty bodies.⁸⁵ Government officials, for example, pointed to the basic and limited knowledge of several treaty body members about the national context and the poor preparation of some members.⁸⁶ Officials also lamented the one-sided approach of treaty bodies and the fact that they

⁸⁴ Interview 47.

⁸⁵ Gras also noted similar aspects in J. Gras, *Monitoring the Convention on the Rights of the Child* (Helsinki: Helsinki University Press, 2001).

⁸⁶ Interviews 5, 8, 13, 19, 61, 66, 79, 91, 93.

easily take over information and criticism of NGOs.⁸⁷ Moreover, some of the interviewed government officials had the feeling that some of the COs were completed before the actual dialogue took place, which in their view also hampered the authority of treaty bodies.⁸⁸ Several officials argued that the treaty bodies lacked independence and that the nature of the process was political.⁸⁹ All of this corresponds with Koskenniemi's observation that those serving in international legal institutions are essentially engaged with politics.⁹⁰

The government officials were slightly more critical about the functioning, quality, and authority of the CRC Committee. One government official even counted the CRC Committee among the 'activist' committees that did not always keep a close eye on the text of the CRC.⁹¹ Some officials noted that the dialogue between the government and the CRC Committee was usually rather emotional and based on expert members' hobbyhorses and personal feelings instead of the facts and data presented by the government.⁹² Some officials even held that the CRC Committee was undeservedly critical and tendentious and in some instances approached the state delegation without respect. They specifically singled out the attack of the Indonesian chair during the dialogue in 1999, allegedly based on personal feelings related to past colonialism.⁹³ One official spoke about 'sneering and conceited remarks' about the 'rotten policy' in the Netherlands.⁹⁴ In addition, it was noted that the great majority of expert members of the CRC Committee had not read the report and did not seem interested in the discussion but primarily in other issues, such as their return flight or submission of their expense account.⁹⁵

Several government officials indicated their disappointment that the discussions in 1999 and 2004 in particular also focused on issues which were not especially related to the CRC, such as homosexuality, abortion, euthanasia, same-sex marriage, and the Netherlands' drugs policy.⁹⁶ Interviewed government officials and NGO representatives both

⁸⁷ Interviews 5, 8, 13, 24, 57, 79, 92.

⁸⁸ Interviews 19, 42, 59, 67.

⁸⁹ Interviews 19, 49, 67.

⁹⁰ See Chapter 2 of this book.

⁹¹ Interview 76.

⁹² Interviews 47, 57, 67.

⁹³ Interviews 47, 81.

⁹⁴ Interview 81.

⁹⁵ Interviews 47, 81, 92.

⁹⁶ Interviews 47, 54, 81, 89.

lamented the absence of a substantive in-depth discussion on the many issues presented to them. The COs were said to be surprisingly short and lacking argumentation.⁹⁷

The views of Dutch government officials and other interviewees illustrate that the different position of the COs of the CRC Committee cannot be explained by the fact that the committee is seen as more authoritative than the other treaty bodies or because there is a compliance pull coming from its COs. Dutch government officials have not been compelled or persuaded to act *only* because of a recommendation of the CRC Committee. The COs have never been a sufficient cause on their own. That is to say, hardly any policy or legislative measures were taken solely as a result of the COs. The four aforementioned examples illustrate that other (domestic) factors are required in order for the government to implement a CO. The next subsection will evaluate whether or not the mobilisation of domestic actors is an important prerequisite for implementation of the COs.

*Hypothesis 2: The Mobilisation of Domestic Actors Peaks
in Relation to the COs of the CRC Committee*

The four examples in the previous section suggest that COs might eventually be implemented when they are taken up and lobbied by domestic actors, whether NGOs, Parliament, or the media. In these four instances, the COs were a contributory cause of the follow-up measures together with many other international and national factors, such as judgements of (international) courts, NGO advocacy, and the commitment of individual government officials or MPs. The examples also illustrate that implementation of COs often required a years-long political process. Domestic actors needed to demonstrate themselves as willing and able to be persistent, spending time and attention on the issue over a long period. The examples show that parliamentary support in particular was often an essential intervening variable for the implementation of COs. This is also illustrated by Table 1, which demonstrates that the COs that were (partly) implemented were often referred to by MPs on several occasions.

⁹⁷ The 2009 COs e.g. included the following concern and recommendation: 'The Committee is concerned about the access to health care for migrant children without a residence permit. The Committee recommends that the State party take appropriate measures to make sure that all children in its territory have access to basic health care.' UN Doc. CRC/C/NLD/CO/3 (2009), paras. 51–2.

Another factor, also to obtain Parliament's attention, was the sustained lobbying by NGOs. The COs of the CRC Committee were frequently used by children's rights NGOs and other domestic actors to support their arguments or legitimise their work.⁹⁸ In this way, the CRC Committee supported domestic actors in framing their advocacy for legal and policy change in terms of human rights. COs thus offered a legal basis for NGO criticism and provided them with better opportunities for lobby and advocacy.⁹⁹ The findings of this research are consistent with a study conducted by Heyns and Viljoen about the impact of UN human rights treaties in twenty countries. They concluded that NGO involvement and mobilisation coupled with media coverage constitute 'an enabling domestic environment' which enhances the impact of the treaties and the COs.¹⁰⁰ The findings also mirror the boomerang effect previously described. That is to say, NGOs often highlighted issues in their alternative reports to the treaty bodies that they were already lobbying for domestically. They did this deliberately, with the idea of obtaining a useful and authoritative recommendation that gave extra strength and legitimacy to their claims. In this way, they used the process of reporting strategically.

Domestic mobilisation was practically absent with respect to the process of reporting under the other five treaty bodies. Table 2 shows that the COs of the CRC Committee were mentioned in more documents sent to Parliament by the government (on 24 occasions) than all the COs of the five other treaty bodies together (on 17 occasions). The same holds true for Parliament, with 56 parliamentary papers referring to the COs of the CRC Committee, as opposed to only 41 for the five other treaty bodies.

⁹⁸ Woll noted that COs served as 'a guide or frame of reference'. Lisa Woll, 'Reporting to the UN Committee on the Rights of the Child: A Catalyst for Domestic Debate and Policy Change', *International Journal of Children's Rights*, 8/1 (2000), 71–81 at 72–3, 76. See also Gerison Lansdown, 'The Reporting Process under the Convention on the Rights of the Child', in Philip Alston and James Crawford, eds, *The Future of UN Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000), 113–28 at 116; Walter Kälin, 'Examination of State Reports', in Helen Keller and Geir Ulfstein, eds, *UN Human Rights Treaty Bodies: Law and Legitimacy*, 16–71 at 40.

⁹⁹ Andrew Clapham, 'UN Human Rights Reporting Procedures: An NGO Perspective', in Alston and Crawford, eds, *The Future of UN Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000), 175–98; Scott Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform', also in Alston and Crawford, *Treaty Monitoring*, 129–44.

¹⁰⁰ Christof Heyns and Frans Viljoen, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level', *Human Rights Quarterly*, 23/3 (2001), 483–535 at 522–4.

Table 2. *Domestic Mobilisation in relation to the COs from 1995 to 2011 in the Netherlands*

	ICERD COs 1998,2000, 2004, 2010	ICESCR COs 1998, 2006, 2010	ICCPR COs 2001, 2009	CEDAW COs 2001, 2007, 2010	CAT COs 2000, 2007	CRC COs 1999, 2004, 2009
Government treaty COs	71 (5)	123 (0)	354 (1)	221 (10)	139 (1)	463 (24)
Parliament treaty COs	31 (7)	77 (4)	186 (7)	151 (21)	84 (2)	444 (56)
National courts treaty COs	17 (0)	127 (4)	1279 (0)	39 (5)	128 (1)	853 (2)
NGO lobbying	Limited	Practically non- existent	Limited / practically non- existent	Active	Practically non- existent	Active
Media coverage (newspaper articles)	8	1	22	24	5	37

Source: J. Krommendijk, *The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in the Netherlands, New Zealand and Finland* (Antwerp: Intersentia, 2014), 258.

Media coverage of the reporting process under the CRC was also significantly higher.

It is particularly noteworthy that there has been a Dutch Children's Rights Coalition of nine NGOs, chaired by the Dutch section of Defence for Children International, that has specifically focused on the domestic implementation of the CRC. This coalition has used the process of reporting strategically and has embedded the process in its broader political lobby at the national level. This also reflects the observation in the Introduction that human rights are frequently 'instrumentalised'.¹⁰¹ For instance, the coalition has sent its comments on the government's reaction to the COs to Parliament and to the responsible minister. It has

¹⁰¹ Chapter 1, pp. 2, 4 and 6.

also organised conferences and seminars to discuss follow-up to COs with MPs or with individual ministers. In addition, there have been structural half-yearly meetings between the coalition and an interdepartmental governmental working group on children's rights. Such NGO activities have hardly ever happened for the process of reporting under the other treaties.

Children's rights NGOs were also relatively successful lobbying on the basis of COs. The COs that led to some changes or follow-up measures mirror the policy issues that NGOs lobbied on.¹⁰² The NGO lobby was often a reason for MPs to allude to COs or to put forward a legislative proposal, as was the case with the Children's Ombudsman. Likewise, NGOs were crucial for generating media attention. The significant role of NGOs in relation to the CRC can be explained by the historic connection of NGOs to the CRC, including involvement in the negotiations of the text of the CRC. The CRC Committee has the closest links with NGOs of all the treaty bodies.¹⁰³ In addition, there has been a Geneva-based NGO Group for the CRC (now working under the name Child Rights Connect) which has provided information and training about the process of reporting and linked domestic NGOs with the CRC Committee.

Another important explanation for the higher level of domestic mobilisation in relation to the CRC is the salience of the issue of children's rights among politicians. Children's rights meet a clear response in wider society. Nobody wants to be seen as not in favour of children's rights. It is widely acknowledged that children are by definition in a vulnerable position and in need of protection. The salience of children's rights is well illustrated by the case of Mauro in 2011. The boy Mauro faced expulsion to his country of origin, Angola, after having lived in the Netherlands in a foster family for eight years. This case was extensively covered in the media. Parliamentary attention was considerable and some MPs, the Children's Ombudsman, and the Dutch National UNICEF Committee

¹⁰² Majorie Kaandorp, a former representative of the Dutch section of Defence for Children, outlined several issues for which the Dutch Children's Rights Coalition had lobbied both at the national level and among the CRC Committee and which were included in the COs 2004. Among them were several implemented COs, including three of the four examples discussed above, omitting the issue of life imprisonment. Majorie Kaandorp, 'Het Bondgenootschap tussen Niet-Gouvernementele Organisaties en het VN-Verdrag inzake de Rechten van het Kind' [The Alliance between NGOs and the CRC], in Defence for Children, *Nederland Rapporteerde over Kinderrechten* [The Netherlands Reports about Children's Rights] (2004), 33–6 at 35.

¹⁰³ A.F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (2001), 46. www.bayefsky.com/report/finalreport.pdf

as well as NGOs such as the Dutch section of Defence for Children International all framed the issue in terms of children's rights and a violation of the CRC.¹⁰⁴ The Mauro case exemplified that children's rights and issues are relatively easy to mobilise around, because these issues have a built-in pressure group and constituency.¹⁰⁵ In addition, children's rights are often perceived as less controversial and contested than other rights, such as prisoner's rights or the rights of (ethnic) minorities and asylum seekers. There seems to be a near consensus among politicians and the public that children's rights are worth promoting and protecting. Nonetheless, when it comes down to their actual implementation and the details, there is more divergence in views.

Another important reason for the higher impact of the CRC is the lack of another treaty or supervisory mechanism in the field of children's rights. Thus, the CRC is the unrivalled frame of reference for children's rights. The consequence of this is that domestic actors, and especially NGOs, are almost exclusively focused on the UN system and couch their demands in the language of children's rights under the CRC. By contrast, for nearly all the other UN human rights treaties there are authoritative or specific equivalents at the regional governance level. The substitute of the Convention against Torture (CAT) and the CAT Committee is the European Convention for the Prevention of Torture, which has a more powerful monitoring committee.¹⁰⁶ Likewise, the equivalent of the International Covenant on Civil and Political Rights at the European level is the European Convention on Human Rights and the European Court of Human Rights in Strasbourg.¹⁰⁷ The Racial Discrimination Convention (ICERD) is eclipsed by EU legislation in the field of racial discrimination and more specific Council of Europe monitoring bodies,

¹⁰⁴ See e.g. 'Kinderombudsman over Mauro' [Children's Ombudsman about Mauro], 28 October 2011. www.dekinderombudsman.nl/86/volwassen/nieuws/kinderombudsman-over-mauro/?id=54; 'Uitzetting van Mauro in Strijd met VN-Kinderrechtenverdrag' [Mauro's Expulsion Violates the CRC], 28 October 2011. www.unicef.nl/nieuws/berichten/2011/10/uitzetting-van-mauro-in-strijd-met-vn-kinderrechtenverdrag

¹⁰⁵ Simmons, *Mobilizing for Human Rights*, 357–8.

¹⁰⁶ Redactioneel, 'Hebben Ze het Wel Goed Gezien? Hoe Om te Gaan met Oordelen van Internationale Mensenrechtencomités' [Editorial, 'Have They Really Seen It Well? How to Deal with Judgements of International Human Rights Committees'], *NTM/NJCM-Bulletin* 37/4 (2012), 387–9 at 389.

¹⁰⁷ Krommendijk, 'De Beperkte Effectiviteit'. See also Jan-Peter Loof, 'Het Parlement, de Mensenrechten en de Zorgvuldigheid in het Wetgevingsproces' [The Parliament, Human Rights and Accuracy in the Legislative Process], in Roel de Lange, ed., *Wetgever en Grondrechten* [The Legislator and Fundamental Rights] (Nijmegen: Wolf Legal, 2008), 85–127 at 116–7.

such as the European Commission against Racism and Intolerance.¹⁰⁸ Even with regard to the Women's Convention (CEDAW), EU legislation in the fields of gender equality, trafficking, and violence against women has diminished the added value of the convention in the Dutch context.¹⁰⁹ Similarly, the European Social Charter and conventions of the International Labour Organization may outweigh, even if they do not fully substitute for, the International Covenant on Economic Social and Cultural Rights.¹¹⁰

Conclusion

The general question addressed in this chapter was whether UN human rights treaty bodies act as engines for incorporating universal norms at the domestic level. I have argued that such incorporation has hardly taken place with respect to the process of state reporting under the majority of the UN human rights treaties. The CRC is a positive exception to this. In several instances the CRC COs have led to a policy or legislative change, often in conjunction with many other interlinking factors. On these occasions, the content of the CRC COs primarily supported, legitimised, or strengthened the arguments of domestic actors in domestic (parliamentary) debates and political decision-making. In this way, the mobilisation of these COs pushed or accelerated the adoption of policy or legislative measures. Accordingly, the rather extensive political mobilisation of domestic actors in relation to children's rights and the CRC is an important explanation for the positive exception that the CRC COs and the CRC Committee have been. Children's rights NGOs in particular have played a key role in the domestic implementation of COs and, hence, the promotion of children's rights.

¹⁰⁸ Krommendijk, *Domestic Impact and Effectiveness*.

¹⁰⁹ R. Janse and Jet Tigchelaar, 'Het vrouwenrechtencomité: niet bekend en niet geacht' [The Women's Committee: Unknown and Unrespected], in Nienke Doornbos, Niek Huls, and Wibo van Rossum, eds, *Rechtspraak van Buiten* (Deventer: Kluwer, 2010), 309–17 at 314; Marjolein van den Brink, 'The CEDAW After All These Years: Firmly Rooted in Dutch Clay?', in Anne Hellum and Henriette Sinding Aasen, eds, *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge: Cambridge University Press, 2013), 482–510 at 496, 502.

¹¹⁰ Reiding noted that the Dutch government has been rather positive about the ILO-system and has referred to it as 'undoubtedly the most effective ... among the worldwide systems' and 'doing a great job in the field of realising economic and social rights'. Hilde Reiding, *The Netherlands and the Development of International Human Rights Instruments* (Antwerpen: Intersentia, 2007), 151.

Ignatieff has characterised the growing development of international human rights norms and monitoring institutions as a 'human rights revolution', while Koskenniemi has referred to a proliferation of rights.¹¹¹ Although this chapter nuances the extent to which states are affected by such a revolution and the extent to which this is instigated at the international (UN) level, the findings in this chapter hint at a children's rights revolution in the Netherlands. This revolution should not necessarily be seen in terms of the material realisation of children's rights. Rather, it refers to the extent to which domestic actors couch their political demands in the language of children's rights and use international standards and monitoring processes to back this up. This is also illustrative of the political dimension of the implementation of international norms. By revealing that domestic politics and domestic mobilisation matter, this chapter corroborates Koskenniemi's thesis that international law should not regard politics as opposed to international law. Rather, domestic politics are an important prerequisite for international law's function and effectiveness.

¹¹¹ Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi, 2007); see Chapter 2 of this book.